

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WAYNE ROSE,

Plaintiff,

- against -

TONY CHIN,

Defendant.

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**BLOOM, United States Magistrate Judge:**

By letter dated December 1, 2010, plaintiff “ask[s] that [] judgment be entered” against defendant. See Docket Entry 38. To the extent that plaintiff requests that a default judgment be entered against defendant, plaintiff’s request is denied. The Court granted defendant leave to move to dismiss the complaint in lieu of filing an answer. See Docket Entry 35. Just as plaintiff has the right to bring his action, defendant has the right to move to dismiss the action.

Plaintiff also states that he “ha[s] not received ANY PAPERS . . . [and] [t]hey have not been filed with the Court.” See Docket Entry 38. However, the docket sheet reflects that defendant filed his motion to dismiss on November 29, 2010, see Docket Entry 36, and served the motion upon plaintiff by first class and certified mail. See Docket Entry 37. By *filing* the motion to dismiss before it was fully-briefed, defendant failed to comply with Judge Garaufis’s rules and the briefing schedule set by the Court. See Docket Entry 35. Accordingly, the Clerk of the Court is directed to terminate defendant’s motion without prejudice to refiling as set forth below.

Defendant shall serve his motion on plaintiff by December 15, 2010; plaintiff shall serve his opposition to the motion on defendant’s counsel by January 12, 2011; and defendant shall serve his

SO ORDERED.

LOIS BLOOM  
United States Magistrate Judge

Dated: December 8, 2010